

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible Telephones)	

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular"), through undersigned counsel, hereby submits Comments in response to the Order on Reconsideration and Further Notice of Proposed Rulemaking ("Further Notice") in the captioned proceeding, FCC 05-122, released June 21, 2005. In the Further Notice the Commission asks whether it can and should extend the live, in-store consumer testing requirement to retail outlets that are not owned or operated by wireless carriers or service providers. It also asks whether the *de minimis* exception should be narrowed. For the reasons set forth below, the Commission should not extend the live, in-store testing requirement to independent retailers. Cingular also opposes narrowing the *de minimis* exception.

I. The Commission Has No Jurisdiction Over Independent Retailers.

The Hearing Aid Compatibility Act ("HAC Act"), 47 U.S.C. § 610, gives the Commission jurisdiction over telephones manufactured in the United States or imported for use in the United States to ensure that handsets are available that are hearing aid compatible. The Commission clearly also has jurisdiction over the carriers it regulates. Nothing in the HAC Act, however, gives the Commission jurisdiction over independent retailers.

The Further Notice asks whether Section 217 of the Communications Act would give the Commission jurisdiction over independent retailers.¹ Section 217 makes carriers responsible for the acts and omissions of its agents, but it does not extend the Commission's jurisdiction to such agents.²

II. The Commission Should Not Extend the Live, In-Store Testing Requirement to Independent Retailers.

Even if the Commission could require live, in-store testing at independent retailers, it should not do so. Large, independent retailers such Wal-Mart, Best Buy or Radio Shack may serve as agents for multiple carriers. Extending the live, in-store testing requirement to such retailers would mean that the retailer would have to ensure network connectivity with each carrier whose service it sells in each of its retail locations nationwide. The magnitude of such a requirement is enormous. In Cingular's case alone, extending the live, in-store testing requirement to independent retailers would require Cingular to ensure network connectivity to almost 14,000 additional locations. Multiply that by the number of carriers whose service is marketed by independent retailers and the scope of the problem becomes apparent.

Security is also a major concern. Cingular can maintain a level of control over the use of its demonstration phones in its own retail stores. Maintaining security in tens of thousands of national retail locations would be virtually impossible. Abuse of these demonstration phones would represent a significant cost to Cingular and the rest of the wireless industry. Furthermore, most national retailers do not display "live" handsets

¹ Further Notice, ¶ 64.

² Section 217 states: "In considering and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person."

because of concerns about theft. Most now use “dummy” handsets for this reason, and even the dummies get stolen. It would impose a huge cost burden on both wireless service providers and large and small retailers if they were required to provide live, in-store testing.

While Cingular’s independent retailers act as Cingular’s agent for the wireless service, the retailers sell handsets for their own account. Cingular does not dictate the number or models of handsets offered by the retailer. Because independent retailers act as agents for multiple carriers, it is highly unlikely that the retailers offer the number of HAC compliant handset models that the rules impose on wireless service providers.³

Cingular operates over 2500 retail outlets nationwide. Customers needing information and assistance in selecting a HAC phone can receive that assistance at any of these locations. Cingular’s web site also provides valuable information to hearing aid users. The Commission does not need to extend the HAC rules to independent retailers in order to ensure that hearing aid users receive the help they need in selecting a HAC handset.

III. Testing in Large Retail Stores May Give a False Sense of Compatibility.

Live, in-store testing in independent retail stores will not necessarily give the customer a good assessment of hearing aid compatibility because, with the network connectivity in the store optimized, the handset operates at minimum power. This may give the customer a false sense of how the handset will work with a hearing aid. It is not until the customer utilizes the handset in a variety of locations that the customer will know if he or she experiences interference. The retail vendors of Cingular’s service are

³ Retailers may find it in their interest to offer HAC phones in order to meet their customer’s needs. It is also likely that retailers will offer HAC phones as manufacturers offer new models to meet the 50% requirement by 2008.

required by contract to honor Cingular's 30-day return policy. Cingular's 30-day return policy ensures that the customer can "test drive" the phone under real world conditions.

IV. The Commission Should Not Narrow the *De Minimis* Exception.

The Further Notice asks for comment on whether the Commission should narrow the *de minimis* exception.⁴ The Commission should retain the existing *de minimis* exception. The *de minimis* exception was carefully tailored to ensure access to HAC handsets by hearing aid users, while not discouraging manufacturers with a small presence in the United States from being able to market handsets here. The *de minimis* exception makes it easier for manufacturers of specialty telecommunications devices designed for individuals with non-hearing related disabilities to offer accessible handsets in the United States. The Further Notice does not cite any examples of problems with the existing *de minimis* exception, and Cingular knows of none.

⁴ The *de minimis* exception provides that if a manufacturer or carrier offers two or fewer digital wireless handset models in the United States, it is exempt from the HAC requirement. If a manufacturer or carrier offers three digital wireless handset models, it must make at least one HAC compliant. In the Matter of Section 68.4(A) of the Commission's Rules Governing Hearing Aid Compatible Telephones, WT Docket No. 01-309, *Report and Order* 18 FCC Rcd 16573 (2003), *Erratum*, 18 FCC Rcd 18047 (2003) at ¶ 69. The *de minimis* exception applies to each air interface offered by a carrier. Further Notice at ¶ 53.

For the foregoing reasons, Cingular encourages the Commission not to extend the HAC requirements applicable to wireless service providers and handset manufacturers to independent retailers, and to maintain the existing *de minimis* exception.

Respectfully submitted,

Joaquin Carbonell
Carol Tacker
M. Robert Sutherland

Counsel for Cingular Wireless LLC
5565 Glenridge Connector, Suite 1754W
Atlanta, GA 30342
(404) 236-6364

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